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In the Privy Council, on the Appeal from the Supreme Court of Canada, between the Attorney-General for the Province of Prince Edward Island, appellant, and the Attorney-General for the Dominion of Canada, respondent, in the matter of a certain question referred to the Supreme Court of Canada by His Excellency the Governor-General, in pursuance of an Order-in-Council approved by His Excellency on the 16th of May, 1903. Subject: Representation of Prince Edward Island in the House of Commons of Canada.

APPELLANT'S CASE.

This is an appeal from a judgment or decision of the Supreme Court of Canada delivered on the 8th day of June, 1903, upon a case referred for the opinion of the said court under the provisions of the Supreme and Exchequer Courts Act as amended by the Act 54-55 Vict. chap. 25 intituled 'An Act to amend Chapter 135 of the Revised Statutes, intituled an Act respecting the Supreme and Exchequer Courts.'

1. Under the statutes above mentioned the following question was submitted to the Supreme Court for decision:—

'Although the population of Prince Edward Island as ascertained at the census of 1901, if divided by the unit of representation ascertained by dividing the number of 65 into the population of Quebec is not sufficient to give six members in the House of Commons of Canada to that province, is the representation of Prince Edward Island in the House of Commons of Canada liable, under the British North America Act, 1867, and amendments thereto and the terms of union of 1873 under which that province entered Confederation, to be reduced below six the number granted to that province by the said terms of union of 1873?'

2. The Supreme Court of Canada answered in the affirmative, deciding that the representation of the province is liable to be reduced according to each decennial census if the unit of representation under the British North America Act is large enough to produce that result.

3. Since the delivery of judgment in the matter an Act has been passed by the Parliament of Canada (3 Edw. VII. c. 60) under which upon the dissolution of the present parliament four members only are to be elected to the House of Commons for the province of Prince Edward Island.

4. The appellant contends that the answer to the question submitted should have been in the negative, and that under the terms of the British North America Act and of the resolutions under which Prince Edward Island entered the Canadian confederation it was intended and ought to be held that the province was to retain six members in the House of Commons as a minimum—that the number of such members should never be made less than six—though, should the result of any decennial census show the province entitled according to its population to more than six members, and should the number of such members be accordingly increased, any additional repre-

sentation so given beyond the original number of six would always be subject to be afterward reduced or wholly taken away, if the result of any subsequent decennial census should, under the provisions of the British North America Act, make it necessary.

5. To appreciate correctly the true intention and effect of the terms of union it is important that the surrounding and preceding circumstances should be understood.

6. Although some previous correspondence in this direction had taken place between the governments in the year 1859, the first practical step taken was in the year 1864, and from the contemporaneous minutes and journals this appears to have been a proposal, or attempt, to unite under one form of government the three maritime provinces—Nova Scotia, New Brunswick, Prince Edward Island—and also Newfoundland (see Journals of the House of Assembly of Prince Edward Island for the year 1864 (Appendix D.), copies of despatches contained therein being annexed hereto in schedule 'A.').

7. In this view a conference of delegates was arranged to be held in Quebec on the 10th October, 1864.

The delegates appointed by the Province of Prince Edward Island to represent the province at this conference were the Honourable Messieurs Grey, Palmer, Pope, Davies, MacDonald, Haviland, Whelan and others.

8. Previous to the meeting of the conference correspondence took place between the government of the then united provinces of Upper and Lower Canada and the governments of the maritime provinces, suggesting that delegates be sent by the Canadian government to be present at the Quebec conference, and, this suggestion being acceded to, delegates from all the provinces and from Newfoundland met in Quebec, and a resolution was passed to form a basis of the terms for confederation. The full text of this resolution and of the terms contained therein will be found in Appendix 'E' Journal of the House of Assembly of Prince Edward Island of the year 1865, and in the Journal of the House of Commons of Canada. Section 17 of this resolution expressly defined a proportionate representation for the House of Commons of Canada upon a basis of population assigning to each province a certain number of members in the federal parliament. The proposal was to give to

Upper Canada (Ontario)	82 members.
Lower Canada (Quebec)	65 "
Nova Scotia	19 "
New Brunswick	15 "
Newfoundland	8 "
Prince Edward Island	5 "

9. It is to be noted that under this scheme Prince Edward Island was to receive a representation of only five members; and also that this resolution expressly provided that 'the number of members at first shall be 194'; and also that the basis of representation in the House of Commons shall be population.

10. And it should also be noticed that afterwards when the terms of the confederation of the provinces of Ontario, Quebec, Nova Scotia and New Brunswick came to be finally settled by the British North America Act, and again in the Order in Council admitting Prince Edward Island in the year 1873, the words 'at first' and 'population' were omitted, and, as the appellant submits, deliberately and of set purpose.

11. The appellant contends that this evidences the intention upon the part of the framers of the constitution of Canada and of the framers of the terms of admission of Prince Edward Island into confederation, to depart from the provisions which had been incorporated in the resolutions of 1864. The wording of this resolution of 1864 plainly indicates that the intention at that time was to adhere rigidly to the principle of representation by population and no other, as the absolute basis of union applicable alike and without exception to each and all of the federating provinces. The

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words of section 17 of the resolution (see schedule 'A') are the 'basis of representation in the House of Commons shall be population.' These words are noticeably absent from the 'British North America Act.' On the contrary the said Act (section 146) provides that Prince Edward Island shall be admitted into the union 'on such terms and conditions' as should be in the addresses expressed. The terms and conditions expressed in the addresses are:—

'That the population of Prince Edward Island having been increased by 15,000 or upwards since the year 1861, the island shall be represented in the House of Commons of Canada by six members' (note absence of words 'at first') 'the representation to be readjusted from time to time under the provisions of the British North America Act, 1867.'

12. The same Order in Council provides for the laying off of the Electoral districts in Prince Edward Island which should be represented in the Dominion House of Commons. The island is divided into three counties, Prince, Queen's and King's, and it is provided in the Order in Council that Prince county shall be represented by two members, Queen's county by two members, and King's county by two members. Read with section 146 of the British North America Act this Order in Council has all the force of an Imperial statute, and the appellant submits that no Imperial statute has taken away from Prince, Queen's and King's counties their respective representation of two members each as given them by this Order in Council, which under the circumstances is no less potent than an Imperial statute of Great Britain.

13. It is further to be pointed out that representation was given to the island, and to these three counties, without reference in any way to the population of either, but by reason of the peculiar situation and geographical features of the island. The 'British North America Act' recognizes these sub-divisions of the country and the representation of different sections in the parliament of the Dominion by counties. That is the scheme of representation provided by section 40 of the statute, and the schedules to the Act annexed. There were, and are, three counties on the island; these three are set apart and separated each from the other by deep indentations into the coast line, so that sea-gulfs lie between each of the three sub-divisions of the island and either of its fellows. Nature has marked out the province for representation by three or some multiple of three. That circumstance was certainly in the minds of those who framed the resolutions as demonstrated by their speeches on that occasion. (See remarks of Colonel Grey, Coles, Pope in said schedule); and that consideration certainly influenced the conclusion then arrived at.

14. In support of his submission that in entering into the pact of union it was the intention of the contracting parties, namely:—The Dominion of Canada and the province of Prince Edward Island—that these considerations should prevail, the appellant refers to the despatches, letters and telegrams which passed between the delegates representing the province, who were negotiating the union, and who were then discussing this question with the Dominion representatives. Copies of these the appellant has annexed to this case (see schedule 'A.')

15. It was within the power of the Dominion government to make special terms and agreements upon the admission of any province into the union as might appear just, provided such terms were ratified and agreed to by Order in Council and confirmed by legislative authority; and such terms and conditions might differ in the cases of different provinces. Illustrations are afforded by what took place in regard to other provinces.

16. The province of Manitoba was formed in the year 1870, and by 33 Vict. cap. 3, sec. 4, it was enacted that 'the said province shall be represented, in the first instance, by four members;' language which recalls the resolutions of the year 1864 before quoted, recurring to the words 'at first' and showing that no vested right in four, or in any fixed number of members, was intended to be conferred upon this new province which was then being for the first time established, the creature, as it were, of the Dominion parliament.

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17. The province of British Columbia was admitted to the union by Imperial Order in Council of the 16th May, 1871, which ratified the address by the province asking such admission. Section 8 of this address provided that 'British Columbia shall be entitled to be represented in the Senate by three members, and by six members in the House of Commons, the representation to be increased under the provisions of the British North America Act, 1867,' thereby giving to this province a guaranty of representation by at all events six members, with this representation subject to increase but not to decrease.

18. This stipulation, the appellant submits, was in entire accord with the true intent and meaning of the 'British North America Act,' in which the appellant contends no intention to provide for or to permit any decrease of original representation as therein defined is anywhere to be found.

19. After many conferences and much discussion and negotiations between the Dominion government and the representatives and government of Prince Edward Island, the island was finally admitted into the union from the 1st day of July, 1873, and the status and position the province then acquired in the confederation depend upon the provisions of the British North America Act, and of the resolutions and addresses constituting the terms upon which union was then agreed to.

20. The sections of the British North America Act which seem important for decision of the question are:—

Section 37 which provides for the aggregate number of members constituting the House of Commons.

Section 51 which provides for a readjustment of representation of individual provinces following each decennial census.

By sub-section 1, Quebec is to have a fixed number of 65 members:

By sub-section 2 each other province is to have such a number of members as will bear the same proportion to its population (ascertained at such census) as the number 65 bears to the population of Quebec:

By sub-section 3, fractional parts of the unit of representation are to be disregarded:

By sub-section 4, on any readjustment the number of members for any province is not to be reduced unless the proportion between the population of the province and that of the Dominion has been reduced by one-twentieth.

Section 52 makes special provision for increasing the whole number of members provided the proportionate representation of the provinces prescribed by the British North America Act is not thereby disturbed.

21. The appellant's contention is that under the terms of the compact and agreement of union Prince Edward Island was given six members, and that that representation was fixed as the minimum for the island, not as a matter of right, or as a matter of giving representation by population as provided in the British North America Act itself, but because of the peculiar position of the province, isolated and impossible of extension in area; and because it was well understood that without an arrangement of that sort it would have been quite impossible to have carried in the island the terms of union (see paragraph from Mr. Pope's speech, schedule 'A'.)

22. The advisability of entering into some special arrangement of this character was present not only to the minds of the Dominion and island representatives, but also to the home government (see letter of Lord Granville, of the 4th September, 1869, a copy of which, from the Journals of the House of Assembly of Prince Edward Island, 1870, is hereto annexed, schedule 'A,' in which he urges upon the government of the Dominion the necessity to deal liberally as well as justly with the island). If the island were to come into the union bound hard and fast by the exact terms of the British North America Act, and on the same footing precisely as the other provinces, what room existed for urging liberality upon the authorities of the Dominion?

23. In the Quebec conference it had been pointed out that a representation of so few as five members out of a house of 194 would be entirely inadequate and unsatisfac-

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tory—that it would give to the island as a constituency so feeble a voice (see per Delegate Palmer, Quebec conference, Prince Edward Island Journals, 1864, schedule 'A' to this case) in the councils of the nation that there would be no return offered for the manifest advantages of self-government which by entering confederation the island would be giving up.

24. In 1873 by increase of population and by the admission into confederation of the new provinces of Manitoba and British Columbia, the Dominion had come to have a representation of 200 members in the House of Commons. There appears under these circumstances the greater reason in the suggestion of the Colonial Office that the Dominion could afford to deal generously and liberally with the island in the matter of representation. It was simply a matter for agreement between the Dominion on the one part and the island on the other; it was settled that there should be six representatives, and upon that basis and understanding the addresses were passed by the provincial House at Charlottetown and by the Dominion parliament, and incorporated in the Queen's Order in Council admitting the province.

25. The population of the island at that time amounted to only about 94,000. The population of Quebec in 1871 being 1,191,516, the unit of representation as fixed by that population for the decade of the seventies in accordance with the provisions of section 51, sub-section 2 of the British North America Act, was 18,331. Therefore had the principle of representation by population been strictly applied, Prince Edward Island could have made no claim to a representation of six members. But the province had been, from the time of the original proposal for confederation, standing out for better terms in the very matter of representation in parliament. These better terms were at last conceded by the Dominion, and these circumstances are relied on as demonstrating that the intention of both parties in entering into the compact of union was that Prince Edward Island should never have less than the number of six representatives.

26. And it is submitted on behalf of the appellant that it manifestly appears from the negotiations which took place as shown by the telegrams and letters annexed to this case, that it was the intention to accord to Prince Edward Island special terms in this respect, and that Prince Edward Island was admitted into the union upon special terms differing in this respect from those enjoyed by any of the other federating provinces.

27. It is conceded on the part of the respondent that Prince Edward Island at the time of entering the union was not according to population entitled to six members, although allowed to have that number; but it is contended that this was a temporary arrangement only, and that it might at the pleasure of the Dominion parliament cease at the next decennial census or at any later time.

28. The appellant contends that this is not a reasonable construction to put upon the contract of union. It would be leaving one of the parties to the compact liberty to vary the terms of that compact to the detriment of the other. Prince Edward Island was by entering the union no doubt expecting to derive some benefits from her change of government, but on the other hand she was giving for such benefits large consideration. She was relinquishing to the Dominion a large measure of the system of self-government she had enjoyed for nearly a century; she was transferring to the Dominion government the right to impose and collect import and export duties on goods imported to and exported from the province; she was giving up the right to the nomination and appointment of many of the public officials the selection of whom had previously rested wholly with the government of the island itself. The exercise of these rights, which naturally were dear to the people of the island, would not in any reasonable view be parted with without corresponding benefits by way of consideration in return, or without securing to the province and people of Prince Edward Island a permanent means by which they should still have a reasonable representation and voice in the regulating by the Dominion of these very privileges and rights which they were thereafter to enjoy as a joint possession.

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29. It is further to be noticed that there is nothing in the terms of union affording any indication that the arrangement with regard to the six members was to be merely a temporary one. The contention of the respondent in this regard seems scarcely reasonable in face of the negotiations shown in the appendix hereto, and in view of the absurd results to which the argument necessarily leads. Upon such an interpretation of the terms of union, if the date at which Prince Edward Island entered confederation had been 1879 or 1880, the increased representation stipulated for would have been enjoyed for but one session of the House, and for one session the island would have voted with six members, while in the next session the same population remaining at the same number would have voted in the House with but five or four members, as the case might be.

30. The appellant refers to the language of Chief Justice Parker of Massachusetts as affording the true canon of construction to be applied to instruments such as those now under consideration and under circumstances such as the present.

In *Henshaw v. Foster* (1830) 9 Pick. at p. 317 he says:—

‘We are to suppose that those who are delegated to the great business of distributing the powers which emanate from the sovereignty of the people, and to the establishment of rules for the perpetual security of the rights of person and property, had the wisdom to adapt their language to future as well as existing emergencies; so that words competent to the then existing state of the community, and at the same time capable of being expanded to embrace more extensive relations should not be restrained to their more obvious and immediate sense, if, consistent with the general object of the authors and the true principles of the compact, they can be extended to other relations and circumstances which an improved state of society may produce.’

31. In 1892 the parliament of Canada passed the statute entitled ‘An Act to readjust the Representation in the House of Commons,’ (55-56 Victoria, chap. 11), the preamble to which Act contains the following statement:—

‘Whereas by the census of the year one thousand eight hundred and ninety-one, and in accordance with the British North America Act, 1867, and certain other Acts of the parliament of the United Kingdom, and of the parliament of Canada, the province of Manitoba is, by its present population, entitled to seven members in the House of Commons, the Province of Nova Scotia to twenty members, the province of New Brunswick to fourteen members, and the province of Prince Edward Island to five members, respectively.

The statute then enacts, *inter alia*, that five members of the House of Commons shall be elected for Prince Edward Island.

32. By this preamble and legislation it would appear that the Dominion parliament in reducing the representation of Prince Edward Island founds its right and authority so to do upon the British North America Act, 1867, and certain other Acts of the parliament of the United Kingdom and of the parliament of Canada.

33. The statute of 1903 further reduces the representation of Prince Edward Island, but in its preamble refers only to the readjustment of the representation necessitated ‘pursuant to the provisions of the British North America Act, 1867, and the other statutes in that behalf.’

34. The appellant points out that so far as the British North America Act is concerned there is nowhere in it by express words any provision or enactment which declares that Prince Edward Island shall have a representation of five members only, and further, that there is no enactment of the Imperial parliament other than the British North America Act providing for or referring to any such reduction. And no enactment of the parliament of Canada alone could be of any force as repealing or affecting an Imperial statute which had previously given to Prince Edward Island six members.

35. Under the British North America Act the only changes in representation contemplated are of increase from the original numbers with diminutions (if subsequently necessary) from such increase. The provision for change is shown by

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section 52 of the Act, which provides that 'The number of members of the House of Commons may be from time to time increased by the parliament of Canada provided the proportionate representation of the provinces prescribed by this Act is not thereby disturbed.'

36. Section 51 of the statute in its express terms applies, and, it is submitted, was intended to apply, only to the four provinces mentioned which were then being united, namely, Ontario, Quebec, Nova Scotia and New Brunswick.

37. The appellant submits that at the time of the federation of these four original provinces into the one Dominion, thenceforth called Canada, a constitution was framed for the new Dominion in the British North America Act, and the thirty-seventh section of that Act provides that the 'House of Commons shall, subject to the provisions of this Act, consist of 181 members,' Ontario having 82 members, Quebec 65 members, Nova Scotia 19 members and New Brunswick 15 members.

38. This, the appellant contends, is a fixed constitution requiring, so long as it remains unamended, that the Canadian House of Commons shall always consist of at least 181 members. Below that number it could never fall; if it did it would cease to be a parliament as formed and fixed by the Act; and there is nothing in the British North America Act providing for or indicating any intention to provide for any reduction below 181 in the whole number of members in the House of Commons, but only provision for increase above that number or subsequent decrease down to the original number. The framers of this constitution for the four originally federating provinces having therefore defined what such constitution should be, it became necessary to make provision for the subsequent admission of other provinces into the union, and section 146 of the British North America Act accordingly provided that it should be lawful for the Queen, by and with the advice of Her Privy Council, on addresses from the Houses of parliament of Canada and from the Houses of the respective legislatures of the different provinces, to admit those provinces or any of them into the union on such terms and conditions in each case as are in the addresses expressed and as the Queen should think fit to approve. The words 'terms and conditions in each case' show clearly that it was anticipated and expected that the terms might in each case be different, and might in one case be more favourable than in another to the province so being admitted.

39. In the court below it was contended that the provision in the twelfth paragraph of the terms of union for readjustment of the representation of the island from time to time under the provisions of the British North America Act meant readjustment under the provisions of section 51 sub-section 2, by dividing the number 65 into the population of Quebec at the time, and thereby obtaining a unit of representation by dividing which into the population of Prince Edward Island the number of its members would be determined. It was argued that the use of the word 'readjusted' required that after each decennial census a readjustment should take place in Prince Edward Island whether the original number of members was thereby reduced or not.

40. It is submitted on behalf of the appellant that this is not a proper or reasonable construction of the resolution or statute, and on the contrary that, as there are no words in any part of the British North America Act providing for a reduction in the number of members given originally by the Act to any province, so this word 'readjusted' in the resolution, if given its proper meaning, implies a readjustment only by way of increase, subject to subsequent variation or reduction of such increase, and so that the number of representatives should never be less than that originally stipulated for.

41. The only provision in the British North America Act in which any reference at all is made to a reduction is sub-section 4 of section 51. This is a negative provision, prescribing that no reduction shall take place unless a certain state of facts exists. Its language does not militate at all against the view that the reduction there

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spoken of is a reduction only when there has been a previous increase, to be made if called for, but only out of such previous increase.

42. And the appellant urges that there is nothing in the British North America Act, or in the addresses or resolutions which preceded or accompanied it, in any way pointing to an intention to reduce the representation originally given each province by that Act as its constitution, and unless an enactment to that effect is found in an Imperial Act, or in Acts ratified by Her or His Majesty, no enactment of the parliament of Canada can alone affect or alter the vested and positive rights secured to each province by its constitution.

43. If the view entertained by the Supreme Court of Canada be upheld there must in the near future arise, apparently inevitably, a condition of things which the appellant submits never could have been within the contemplation of the framers of the British North America Act or of the contracting parties, the Dominion of Canada and the province of Prince Edward Island. The population of Quebec at the time Prince Edward Island entered the confederation was 1,191,516, making the unit of representation some 18,331. But since then the population of Quebec has increased continuously, until it is now 1,648,898, increasing the unit of representation to 25,367. All recent statistics show that the population of Quebec is increasing rapidly, and the next decennial census will almost certainly show a population in that province very largely in excess of the present. The tide of immigration seems to have set towards Canada to an extent never known before in the history of the country, and there seems no reasonable room for doubt that the province of Quebec will rapidly fill up.

44. There is the further circumstance that under the provisions of the British North America Act, 1871 (cap. 28, Imperial Act) the parliament of Canada with the consent of any province may enlarge the limits of such province and increase its area by the addition of new districts and territory, and pursuant to this power the province of Quebec has recently been increased in area by some 118,000 square miles of fertile lands which will no doubt be rapidly filled up with an ever increasing population (61 Vict. c. 3). This of course is but natural in the case of each of the larger provinces of the Dominion, which, by reason of their situation, have opportunity to enlarge their boundaries almost at will out of the vast tracts of unoccupied territory which adjoin them. Prince Edward Island on the other hand is sea-girt, and by nature hemmed in by fixed boundaries which cannot be altered.

45. There is therefore every present prospect that the unit of representation in Canada, decennially increasing as it must in proportion to the ever increasing population of Quebec, will within another two or three decades have grown so large that Prince Edward Island, though its population may also have increased, would, according to such population, have representation in the House of Commons by but one or two members at most; and the day might even come when, if the contention of the respondent is correct, this province would not be entitled to representation in the House of Commons at all.

46. The anomaly would then be presented that Prince Edward Island, an autonomous province of the Dominion, had no representation whatever in the popular branch of the parliament at Ottawa, though under section 147 of the British North America Act the province would still be represented by four senators in the Senate of Canada, as that measure of representation to the island is certainly fixed, and not alterable by the Dominion parliament.

47. The appellant contends that such a condition of affairs could never have been contemplated by the framers of the constitution of Canada, and that so to hold would render such constitution unstable, uncertain and most unsatisfactory to the smaller provinces.

48. The appellant submits that in interpreting the written constitution of a country, or an instrument of federal union entered into between two self-governing states previously independent each of the other, the court will apply principles of con-

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struction more liberal and broad than those which might govern the construction of contracts between individuals. It is submitted that chief regard should be had rather to the true intention of the parties than to the exact meaning of the words they may have used.

49. The principle of construction which should be applied is thus laid down by Mr. Justice Story in his Commentaries on the Constitution of the United States, sec. 455, XIX.:—

‘But the most important rule in cases of this nature is, that a constitution of government does not, and cannot, from its nature, depend in any great degree upon mere verbal criticism, or upon the import of single words. Such criticism may not be wholly without use; it may sometimes illustrate or unfold the appropriate sense; but unless it stands well with the context and subject matter, it must yield to the latter. While, then, we may well resort to the meaning of single words to assist our inquiries, we should never forget that it is an instrument of government we are to construe; and, as has been already stated, that must be the truest exposition which best harmonises with its design, its objects and its general structure.’

See Vattel, B. 2, ch. 17, secs. 285, 286.

50. It is submitted that the narrow and strict construction which in the court below has been put upon the Canadian Act of constitution, and upon the compact between Canada and Prince Edward Island is one that in its ultimate result would tend to the overthrow of the constitution itself.

51. It was further urged in argument in the court below, on behalf of the Dominion government, that section 146 of the British North America Act authorised the admission of Prince Edward Island into the Canadian confederation only on such terms and conditions as Her Majesty might approve ‘subject to the provisions’ of the said Act.

And it was contended that all the negotiations for union, and the terms and conditions then agreed upon, must therefore be entirely controlled by the provisions of the British North America Act, which it was insisted required the representation of each province of the Dominion always to be fixed in exact proportion to the results of each decennial census.

52. In the submission of the appellant full effect is given to the words ‘subject to the provisions of this Act’ and the reasonable construction is put upon them if they are read as applicable to the distribution of legislative powers and to the similar provisions of the statute which are in no way made the subject of special terms and conditions in the articles of union, instead of as governing the matter of parliamentary representation and other subjects which are specially provided for in the terms and conditions in question.

53. The phrase ‘subject to the provisions of this Act’ controls the terms of union in this sense, that section 92 of the statute necessarily defined and limited the powers of the local legislature of the island from the day on which the Order in Council admitting the province into the Dominion took effect. From that day the provisions of section 91 of the Act became applicable to take away from the legislature of the island many powers it before possessed, and numerous other provisions of the Act at once took effect without the least conflict with the special terms and conditions of the contract of union as contained in the addresses upon which the Order in Council was passed.

54. As to the construction of the words ‘subject to the provisions of this Act’ the appellant refers to the views of Lord Justice Brett as expressed in the case of *Ormerod vs. Todmorden Mill Co.* (1882) L.R. 8 Q. B. Div. 664, at page 676, and the appellant submits that in section 146 of the British North America Act the words mean merely that the terms and conditions of union must not in any case be inconsistent with the general or specific provisions of the Act.

55. The appellant accordingly submits that this appeal ought to be allowed for the following among other

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REASONS.

(1) On the grounds appearing in the body of this case.

(2) Because upon the true interpretation of the addresses which express the terms and conditions of union between the province of Prince Edward Island and the Dominion of Canada it was then intended and agreed that the province should always have at least six members in the Canadian House of Commons.

(3) Because the history of the negotiations leading to the union demonstrates that this measure of representation was expressly stipulated for by the province, and that without it union would never have been consented to by the province.

(4) Because by the terms of the Imperial Order in Council admitting the province into the Canadian confederation two members are given to each of the three counties into which the province is divided.

(5) Because all the circumstances of the case, as well as the reason of the thing, forbid the articles of union being interpreted as merely a temporary provision to endure only till the end of the then current decade.

(6) Because no provision for reducing the number of members in the Canadian House of Commons is, in terms, made in the British North America Act.

(7) Because the said Act contemplates, and by necessary intendment implies, that under no circumstances shall the whole number of members in the said House of Commons ever be less than 181, nor the number of such members to be elected by any province less than the number assigned in 1867 to that province by the said Act.

(8) Because the necessary result of applying to the province of Prince Edward Island the basis of representation to the Canadian House of Commons laid down in the court below will sooner or later be to deprive that province of all representation whatever in the said House.

ARTHUR PETERS.

A. B. AYLESWORTH.

SCHEDULE 'A' TO CASE.

EXTRACTS FROM JOURNAL OF THE HOUSE OF ASSEMBLY OF THE PROVINCE OF PRINCE EDWARD ISLAND FOR THE YEAR 1864.

Appendix 'D.'

Despatch No. 22. From Major-General Doyle, administrator of the government of Nova Scotia to Lieutenant-Governor Dundas, in relation to a proposed union of the three maritime provinces of British North America.

From Lieut.-Governor Dundas to Major-General Doyle in reply.

Further correspondence between the same on the same subject.

Major-General Doyle to Lieutenant-Governor Dundas, Government House, Halifax, N.S., February 6th, 1864.

His Excellency George Dundas, &c., &c., &c.

I have the honour to bring under the notice of your Excellency the following extract from the speech addressed to the legislature of this province, on the 4th instant, relating to the proposed union of the three maritime provinces, in the hope that corresponding action may be taken by the government of Prince Edward Island.

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‘The importance of consolidating the influence and advancing the common progress of the three maritime provinces whose interests are so closely identified, has for some time attracted a large share of public attention, and I propose to submit for your consideration, a proposition in which the co-operation of the governments of New Brunswick and Prince Edward Island will be invited with a view to the union of the three provinces under one government and legislature.’

In accordance with the announcement thus made, the government propose to submit to the legislature a resolution authorizing the appointment of delegates to confer with delegates who may be appointed by the government of New Brunswick, and Prince Edward Island, for the purpose of arranging such preliminaries as may be considered necessary for the union of the three provinces under one government and legislature, such action to take effect only, when confirmed by the legislatures of the three provinces and approved by Her Majesty the Queen.

HASTINGS DOYLE.

Lieut.-Governor Dundas to Major-General Doyle, Government House, Prince Edward Island, 17th February, 1864.

His Excellency Major-General Hastings Doyle.

I have the honour to acknowledge the receipt this day of your despatch of the 8th instant, in which you bring under my notice an extract from your speech to the legislature of Nova Scotia, which has reference to the proposal of a legislative union of the provinces of Nova Scotia, New Brunswick and Prince Edward Island.

I shall at the earliest opportunity bring under the notice of the executive council of this province, the resolution which in accordance with the announcement in your speech, your ministers propose to submit to the legislature of Nova Scotia on this important question.

GEORGE DUNDAS,
Lieut.-Governor.

Major-General Doyle to Lieut.-Governor Dundas, Government House, Halifax, N.S., 29th February, 1864.

In continuation of my despatch of the 8th instant, I have the honour to inform your Excellency that the government here, propose to introduce the annexed resolution upon the subject of the union of the maritime provinces, but will defer doing so at present, in order that they may receive any suggestions, upon the terms of the resolution which your Excellency's government may wish to offer. As it is certainly much to be desired, that the wording of the resolution proposed to the different legislatures should be as nearly identical as possible.

HASTINGS DOYLE.

Resolved, that His Excellency the administrator of the government be requested to appoint delegates (not to exceed five) to confer with delegates who may be appointed by the governments of New Brunswick and Prince Edward Island, for the purpose of arranging a preliminary plan for the union of the three provinces under one government and legislature, such union to take effect when confirmed by the legislative enactment of the various provinces interested and approved by Her Majesty the Queen.

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Lieut.-Governor Dundas to Major-General Doyle, Government House, Prince Edward Island, 11th March, 1864.

His Excellency Major-General Hastings Doyle, &c., &c., &c.

I have the honour to acknowledge the receipt, on the 9th instant, of your despatch of date the 29th ultimo, on the subject of a proposed administrative and legislative union of the provinces of Nova Scotia, New Brunswick and Prince Edward Island, and to inform you, that I have referred a copy of that despatch and of the resolution enclosed for the consideration of the Executive Council of this island.

GEORGE DUNDAS,
Lieut.-Governor.

EXTRACT FROM JOURNALS OF THE HOUSE OF ASSEMBLY OF THE PROVINCE OF PRINCE EDWARD ISLAND FOR THE YEAR 1865.

Appendix 'E.'

Report of resolutions adopted at the conference of delegates from the provinces of Canada, Nova Scotia and New Brunswick, and the colonies of Newfoundland and Prince Edward Island, held at the city of Quebec, 10th October, 1864, as the basis of a proposed confederation of those provinces and colonies.

17. The basis of representation in the House of Commons shall be population, as determined by the official census every ten years; and the number of members at first shall be 194, distributed as follows:—

Upper Canada.. . . .	82
Lower Canada.. . . .	65
Nova Scotia.. . . .	19
New Brunswick.. . . .	15
Newfoundland.. . . .	8
and Prince Edward Island.. . . .	5

18. Until the official census of 1871 has been made up, there shall be no change in the number of representatives from the several sections.

19. Immediately after the completion of the census of 1871, and immediately after every decennial census thereafter, the representation from each section in the House of Commons shall be readjusted on the basis of population.

20. For the purpose of such readjustments Lower Canada shall always be assigned sixty-five members, and each of the other sections shall at each readjustment receive, for the ten years next succeeding, the number of members to which it will be entitled on the same ratio of representation to population as Lower Canada will enjoy according to the census last taken by having sixty-five members.

21. No reduction shall be made in the number of members returned by any section unless its population shall have decreased relatively to the population of the whole union to the extent of five per centum.

EXTRACT FROM JOURNALS OF THE HOUSE OF ASSEMBLY OF THE PROVINCE OF PRINCE EDWARD ISLAND FOR THE YEAR 1870.

Appendix 'F.'

The Secretary of State for the Colonies, to the Governor-General.

DOWNING STREET, 4th September, 1869.

Governor-General.

The Right Honourable Sir John Young Bt., G.C.B., G.C.M.G., &c., &c., &c.

I have read with much satisfaction the speech with which you closed the last session of the parliament of the Dominion of Canada, as well as the resolutions of the

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parliament, authorizing your government to enter into negotiations with the government of Prince Edward Island, with a view to the admission of that colony into the Dominion.

I trust, that in settling the terms proposed as the basis of this arrangement, the government of the Dominion will deal liberally as well as justly with the island, and that the government of the island will receive favourably such propositions when made, as I believe it is in the interest of the whole of the British North America colonies that they should be united under one government; and Her Majesty's government watch with much interest the successive steps that are being taken towards the accomplishment of this great end.

GRANVILLE.

Appendix 'G.'

EXTRACTS FROM SPEECHES DELIVERED AT THE QUEBEC CONFERENCE IN 1864.

Mr. Palmer—

'Why give up so great certainties where we have only a feeble voice?'

Mr. Whelan—

'Our people would not be content to give up their present benefits for the representation of five members. It may be said that confederation will go on without Prince Edward Island and that we shall eventually be forced in. Better however that, than we should willingly go into confederation with that representation.'

Colonel Grey—

'The provision of five members is unsatisfactory. Prince Edward Island is divided longitudinally into three counties. We cannot divide three counties into five members. Besides to divide into ridings would cut the capitals in two.'

Mr. Coles—

'Mr. Galt has proposed six members for Prince Edward Island. I approve that rather than Mr. Brown's motion because it allows us to give our counties two members each.'

Mr. Pope—

'The circumstances of Prince Edward Island are such that I hope the conference will agree to give us such a number as we can divide amongst our three (3) constituencies. Nature as well as the original settlement of the island has made three counties and it would give rise to much difficulty if we had to adjust five members to the three counties. I cannot ask it as a matter of right, but as one of expediency, as one without which it is impossible for us to carry the measure in Prince Edward Island.'

Mr. Haviland—

'Prince Edward Island would rather be out of the confederation than consent to the motion. We would have no status, only five members out of one hundred and ninety-four would give the island no position.'

Appendix 'H.'

EXTRACTS FROM SPEECH DELIVERED IN THE HOUSE OF ASSEMBLY OF PRINCE EDWARD ISLAND IN 1873 BY HON. MR. POPE—PARLIAMENTARY REPORTER, 1873, P. 204.

'All the arguments used by the delegates sent from this island to the Quebec conference, in reference to our representation in the House of Commons, were to the effect that two members should be allowed each county.'

Appendix 'I.'

Copies of Telegrams.

Telegram from Robert P. Haythorne, president of the executive council, to Lieutenant-Governor Robinson, Ottawa, February 26th, 1873.

Held two conferences. Increase of annual allowance, railway debt, steam dredge, will be freely conceded in addition to better terms, but railway debt in addition to difference of old debt in our favour thought too much. Probably yield six representatives.

Telegram from Messrs. Laird and Haythorne to Honourable Edward Palmer, Charlottetown,—Ottawa, 3rd March, 1873.

Increase of annual allowance, total railway debt, steam dredge conceded. Law courts conceded with entire possession. Fisheries same as other provinces, if not settled before union. \$800,000 for land, increased by interest on \$100,000. \$431,000 allowed, instead of difference on old debt. In other respects better terms are to stand. We advise dissolve upon these terms. Do our colleagues concur? Immediate answer required.

Telegram from Lieutenant-Governor Robinson to Honourable R. P. Haythorne, Ottawa, 4th March, 1873.

Terrific snow storm. Travelling impossible. Will meet council and telegraph answer as soon as possible.

Telegram from Hon. R. P. Haythorne, Russell House, to Lieutenant-Governor Robinson, Ottawa, March 6th, 1873.

Highly probable get six representatives. Try and send reply council as soon as possible. Unable close here till received. Have councillors arrived?

Telegram from Lieut.-Governor Robinson to Hon. R. P. Haythorne, Ottawa, March 6th, 1873.

Council concur in advising dissolution, which will accordingly take place to-morrow. We hope six representatives will be conceded.

Telegram from Hon. R. P. Haythorne, to Hon. Edward Palmer, Charlottetown. Ottawa, 8th March, 1873.

Synopsis for publication. Terms to island passed Privy Council, Canada, yesterday.

Dominion will assume debt until reaches forty-five dollars per head population last census, or pay interest on difference at five per cent. Railways under contract property of Dominion. New building and dredge paid for by Canada. Yearly allowance, thirty thousand dollars local government, and forty-five thousand dollars for loss of Crown lands, except interest on sums drawn, not exceeding eight hundred thousand dollars purchase remaining estates. Except modifications stated, and interest difference old debt, better terms allowed. Six representatives conceded, one hundred and thirty thousand dollars yearly, better than better terms.

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APPENDIX K.

STATEMENT showing the population and representation in the Canadian House of Commons of the Provinces of Canada since the passing of the B.N.A. Act 1867.

	Number of Members under B.N.A. Act	Population 1871.	Number of Members; Act of 1872.	Population 1881.	Number of Members; Act of 1882.	Population 1891.	Number of Members; Act of 1892.	Population 1901.	Number of Members; Act of 1903.
Unit of representation being 1-65th part of the population of Quebec		18,331		20,908		22,900		25,367	
Quebec	65	1,191,516	65	1,359,027	65	1,488,535	65	1,648,898	65
Ontario	82	1,620,851	88	1,926,922	92	2,114,321	92	2,182,947	86
Nova Scotia	19	387,800	21	440,572	21	450,396	20	459,574	18
New Brunswick	15	285,594	16	321,233	16	321,363	14	331,120	13
Manitoba		18,995	4	62,260	5	152,506	7	255,211	10
British Columbia		36,247	6	49,459	6	98,173	6	178,657	7
Prince Edward Island		94,021		108,891	6	109,078	5	103,259	4
The Territories (North-West and Yukon).				56,446		93,967	4	211,649	11
Canada	181	3,635,024	200	4,324,810	211	4,833,239	213	5,371,315	214

IN THE PRIVY COUNCIL ON APPEAL FROM THE SUPREME COURT OF CANADA.

In the matter of the representation in the House of Commons of certain provinces of the Dominion consequent upon the last decennial census.

Between

THE ATTORNEY-GENERAL FOR THE PROVINCE OF NEW BRUNSWICK

Appellant

and

THE ATTORNEY-GENERAL FOR THE DOMINION OF CANADA

Respondent.

CASE ON BEHALF OF THE APPELLANT.

1. This is an appeal from a decision of the Supreme Court of Canada upon a special case stated for its opinion in the above matter under the provisions of the Canadian statute known as the Supreme and Exchequer Courts Act, as amended by the Act 54 and 55 Victoria, chapter 25, intituled 'An Act to amend Chapter 135 of the Revised Statutes, intituled An Act respecting the Supreme and Exchequer Courts.'

2. The special case so stated was as follows:—

'Extract from a report of the Committee of the Honourable the Privy Council approved by the Governor-General on the 17th April, 1903:—

'On a report dated 15th April, 1903, from the Minister of Justice, submitting that in connection with the proposed readjustment of the representation in the House of Commons of the provinces of the Dominion, consequent upon the last decennial census, the province of New Brunswick, supported by the province of Nova Scotia, contends for a construction of section 51 of the British North America Act, 1867.

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different from that which has been heretofore applied and which is adopted by your Excellency's advisers. These provinces have therefore asked that a reference be made to the Supreme Court of Canada for a determination of the question in difference.

The Minister therefore recommends that the following question suggested by the government of New Brunswick, and approved, as the Minister of Justice is informed, by the government of Nova Scotia, be referred to the Supreme Court for hearing and consideration pursuant to the authority of the Supreme and Exchequer Court Act, as amended by the Act 54 and 55 Victoria, chapter 25, intituled "An Act to amend Chapter 135 of the Revised Statutes intituled An Act respecting the Supreme and Exchequer Courts."

'In determining the number of representatives in the House of Commons to which Nova Scotia and New Brunswick are respectively entitled after each decennial census, should the words "aggregate population of Canada" in sub-section 4 of section 51 of the British North America Act, 1867, be construed as meaning the population of the four original provinces of Canada, or as meaning the whole population of Canada including that of provinces which have been admitted to the confederation, subsequent to the passage of the British North America Act.

'The committee submit the same for approval.

JOHN J. MCGEE,

'Clerk of the Privy Council.'

3. It will be seen therefore that the question for decision upon the special case was the true construction of section 51, sub-section 4, of the British North America Act, 1867, being the Imperial statute under which the Dominion of Canada was originally constituted. The decision of this question seriously affects the representation in the Dominion House of Commons to which the several provinces of Ontario, Nova Scotia and New Brunswick (which together with the province of Quebec were the original provinces of the Dominion) are now entitled.

4. In order to understand the nature of the question, and the contentions of the appellant thereon, it will be necessary to refer shortly to the provisions of the British North America Act, 1867, and to the various legislative and executive Acts whereby the other provinces and territories now constituting the Dominion of Canada were admitted into the union.

5. The British North America Act, 1867 (hereinafter called the Act of 1867), of which the full title is 'An Act for the Union of Canada, Nova Scotia and New Brunswick, and the government thereof; and for purposes connected therewith' recites (*inter alia*) that the provinces of Canada, Nova Scotia and New Brunswick have expressed their desire to be federally united into one Dominion under the Crown of the United Kingdom of Great Britain and Ireland, with a constitution similar in principle to that of the United Kingdom; that in the establishment of the union by authority of parliament it is expedient not only that the constitution of the legislative authority in the Dominion be provided for, but also that the nature of the executive government therein be declared; and that it is expedient that provision be made for the eventual admission into the union of other parts of British North America.

6. Section 3 of the Act of 1867 provides as follows:—

'It shall be lawful for the Queen by and with the advice of Her Majesty's Most Honourable Privy Council to declare by proclamation that on and after a day therein appointed, not being more than six months after the passing of this Act, the provinces of Canada, Nova Scotia and New Brunswick shall form and be one Dominion under the name of Canada; and on and after that day those three provinces shall form and be one Dominion under that name accordingly.'

7. Section 4 of the Act of 1867 provides as follows:—

'The subsequent provisions of this Act shall, unless it is otherwise expressed or implied, commence and have effect on and after the union, that is to say, on and after

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the day appointed for the union taking effect in the Queen's Proclamation; and in the same provisions unless it is otherwise expressed or implied the name Canada shall be taken to mean Canada as constituted under this Act.'

8. It is provided by section 5 of the Act of 1867 that Canada shall be divided into four provinces named Ontario, Quebec, Nova Scotia and New Brunswick, and by section 6 that the parts of the province of Canada (as it existed at the commencement of the Act) which formerly constituted the provinces of Upper Canada and Lower Canada should be deemed to be severed, and should form two separate provinces, the part which formerly constituted the province of Upper Canada thereafter constituting the province of Ontario, and the part which formerly constituted the province of Lower Canada thereafter constituting the province of Quebec.

9. Section 8 of the Act of 1867 provides as follows:—

'In the general census of the population of Canada which is hereby required to be taken in the year one thousand eight hundred and seventy-one and in every tenth year thereafter the respective populations of the four provinces shall be distinguished.'

10. By section 17 of the Act of 1867 it is provided that there shall be one parliament for Canada, consisting of the Queen, an Upper House styled the Senate, and the House of Commons, and by section 37, that the House of Commons shall, subject to the provisions of this Act, consist of 181 members of whom 82 shall be elected for Ontario, 65 for Quebec, 19 for Nova Scotia and 15 for New Brunswick.

11. The 51st section of the Act is as follows:—

'51. On the completion of the census in the year one thousand eight hundred and seventy-one, and of each subsequent decennial census the representation of the four provinces shall be readjusted by such authority in such manner and from such time as the parliament of Canada from time to time provides, subject and according to the following rules:—

'(1) Quebec shall have the fixed number of sixty-five members.

'(2) There shall be assigned to each of the other provinces such a number of members as will bear the same proportion to the number of its population (ascertained at such census) as the number sixty-five bears to the number of the population of Quebec (so ascertained).

'(3) In the computation of the number of members for a province a fractional part not exceeding one-half of the whole number requisite for entitling the province to a member shall be disregarded; but a fractional part exceeding one-half of that number shall be equivalent to the whole number.

'(4) On any such readjustment the number of members for a province shall not be reduced unless the proportion which the number of the population of the province bore to the number of the aggregate population of Canada at the then last preceding readjustment of the number of members for the province is ascertained at the then latest census to be diminished by one-twentieth part or upwards.

'(5) Such readjustment shall not take effect until the termination of the then existing parliament.'

12. By section 52 of the Act of 1867 it is provided that the number of members of the House of Commons may be from time to time increased by the parliament of Canada, provided the proportionate representation of the provinces prescribed by this Act is not thereby disturbed.

13. The only other sections of the Act of 1867 to which it is necessary to refer for the purpose of the present appeal are sections 146 and 147. By section 146 it is provided that it shall be lawful for the Queen by and with the advice of Her Majesty's most Honourable Privy Council on addresses from the Houses of parliament of Canada and from the Houses of the respective legislatures of the colonies or provinces of Newfoundland, Prince Edward Island and British Columbia to admit these colonies or provinces, or any of them, into the union, and on address from the Houses of parliament of Canada to admit Rupert's Land and the North-western Territory or either

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of them into the union on such terms and conditions in each case as are in the addresses expressed, and as the Queen thinks fit to approve, subject to the provisions of this Act; and the provisions of any Order in Council in that behalf shall have effect as if they had been enacted by the parliament of the United Kingdom of Great Britain and Ireland, and by section 147 certain provisions are made with regard to the representation of Newfoundland and Prince Edward Island in the Senate if and when admitted into the union.

14. It is to be observed that there is no provision whatever in the Act of 1867 for the admission to the union of any colonies, provinces or territories other than those specifically referred to in the 146th section of the Act, or for the representation in the House of Commons of the Dominion of any of the colonies or provinces so specifically referred to. The representation in the Dominion House of Commons of Prince Edward Island, British Columbia, Rupert's Land and the North-west Territory when admitted into the union under the provisions of section 146 of the said Act is left to be determined by the addresses and orders necessary for such admission.

15. By Imperial proclamation, dated the 22nd of May, 1867, it was declared that on and after the 1st July, 1867, the provinces of Canada, Nova Scotia and New Brunswick, should form and be one Dominion under the name of Canada, and the Dominion of Canada accordingly came into existence as provided by and subject to the provisions of the Act of 1867.

16. Shortly afterwards the Canadian House of parliament desired the admission into the Dominion of Rupert's Land and the North-western Territories. It was, however, found that the then existing letters patent of the Hudson Bay Company, which owned and enjoyed certain rights over a portion of the territory in question, would prevent full powers of government and legislation over Rupert's Land and the North-western Territories being transferred to the Canadian parliament. To remedy this state of things, the Imperial parliament passed the Act known as the Rupert's Land Act, 1868, whereby after reciting (*inter alia*) an agreement between the said company and Her Majesty for a surrender to Her Majesty of all the company's lands and rights enjoyed under their letters patent, it was provided (section 3) that it should be competent for the company to surrender, and for Her Majesty to accept, a surrender of such lands and rights provided that such surrender should not be accepted by Her Majesty until the terms and conditions upon which Rupert's Land should be admitted into the Dominion should have been approved of by Her Majesty and embodied in an address from both Houses of the Dominion parliament in pursuance of section 146 of the Act of 1867, and that the said surrender and acceptance should be void unless within a month from the date of such acceptance Her Majesty should by Order in Council under the provisions of the same Act admit Rupert's Land into the said Dominion, and (section 5) that it should be competent to Her Majesty by any such Order in Council as aforesaid on address from the Houses of the parliament of Canada to declare that Rupert's Land should, from a date to be therein mentioned, be admitted into and become part of the Dominion of Canada, and thereupon it should be lawful for the parliament of Canada from the date aforesaid to make, ordain and establish within the land and territory so admitted as aforesaid, such laws, institutions and ordinances as might be necessary for the peace, order and good government of Her Majesty's subjects and others therein.

17. The terms and conditions for the admission of Rupert's Land and the North-west Territory into the Dominion were, in due course, embodied in an address to Her Majesty, from both houses of the parliament of Canada, and approved of by Her Majesty, who thereupon accepted the said surrender, and within a month thereafter, by Order in Council dated the 24th June, 1870, declared that from the 15th July, 1870, the North-west Territory and Rupert's Land should be admitted into and become part of the Dominion, upon the terms and conditions embodied in the last-mentioned address. Such terms and conditions contained, however, no provision as to the representation in the Dominion parliament of either Rupert's Land or the North-west Territory.

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18. Previously to the date of the said last mentioned Order in Council an Act had been passed by the parliament of Canada, 33 Vict., c. 3, intituled 'An Act to amend and continue the Act 32 and 33 Victoria, chapter 3, and to establish and provide for the government of the province of Manitoba' (hereinafter called the Act of 1870), which, so far as material to be herein stated, provided as follows:—

Section 1. 'On from and after the date upon which the Queen by and with the advice and consent of Her Majesty's most Honourable Privy Council under the authority of the 146th section of the British North America Act, 1867, shall by Order in Council in that behalf admit Rupert's Land and the North-west Territory into the union or Dominion of Canada there shall be formed out of the same a province which shall be one of the provinces of the Dominion of Canada and which shall be called the province of Manitoba.

Section 2. 'On from and after the said day on which the Order of the Queen in Council shall take effect as aforesaid the provisions of the British North America Act 1867 shall except those parts thereof which are in the terms made or by reasonable intendment may be held to be specially applicable to or only to affect one or more but not the whole of the provinces now composing the Dominion and except so far as the same may be varied by this Act be applicable to the province of Manitoba in the same way and to the like extent as they apply to the several provinces of Canada and as if the province of Manitoba had been one of the provinces originally united by the said Act.

Section 4. 'The said province shall be represented in the first instance in the House of Commons of Canada by four members and for that purpose shall be divided by proclamation of the Governor General into four electoral districts, each of which shall be represented by one member. Provided that on the completion of the census in the year 1881 and of each decennial census afterwards the representation of the said province shall be readjusted according to the provisions of the fifty-first section of the British North America Act, 1867.'

19. The number of members of the House of Commons assigned to the new province of Manitoba by the Act of 1870 was out of all proportion to the number of its population according to the basis of representation by population provided for in the case of the four original provinces by the Act of 1867, and doubts were expressed as to whether the parliament of Canada had power to establish any new province out of the territories admitted, or to provide for the representation of such a province in the said parliament. To remove such doubts the British North America Act, 1871, was passed by the Imperial parliament.

20. The British North America Act, 1871 (hereinafter called the Act of 1871), recites that doubts have been entertained respecting the powers of the parliament of Canada, to establish provinces in territories admitted or which may hereafter be admitted into the Dominion of Canada, and to provide for the representation of such provinces in the said parliament, and it is expedient to remove such doubts and to vest such powers in the said parliament, and provides (section 2) as follows:—

'2. The parliament of Canada may from time to time establish new provinces in any territories forming for the time being part of the Dominion of Canada, but not included in any province thereof, and may at the time of such establishment make provision for the constitution and administration of any such province, and for the passing of laws for the peace, order, and good government of such province, and for its representation in the said parliament.'

21. The Act of 1871 also provides (section 5) that the Act of 1870 shall be valid and effectual for all purposes whatsoever from the date at which it received the assent in the Queen's name of the Governor General of Canada.

22. In the year 1871 the parliament of Canada and the legislature of British Columbia respectively adopted addresses praying for the admission of British Columbia into the Dominion upon the terms and conditions therein mentioned, and by an Order in Council dated the 16th May, 1871, hereinafter called the Order of 1871, it was

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declared that on, from and after the 20th July, 1871, the colony of British Columbia should be admitted into and become part of the Dominion of Canada upon the terms and conditions set forth in the said addresses, copies of which were contained in the schedules to the said Order annexed.

23. By the said terms and conditions it was provided (*inter alia*) as follows:—

‘Clause 8. British Columbia shall be entitled to be represented in the Senate by three members and by six members in the House of Commons. The representation to be increased under the provision of the British North America Act, 1867.’

‘Clause 10. The provisions of the British North America Act, 1867, shall (except those parts thereof which are in terms made or by reasonable intendment may be held to be specially applicable to and only affect one and not the whole of the provinces now comprising the Dominion and except so far as the same may be varied by this minute) be applicable to British Columbia in the same way and to the like extent as they apply to the other provinces of the Dominion and as if the colony of British Columbia had been one of the provinces originally united by the said Act.’

24. In the same manner, Prince Edward Island was admitted into the Dominion as from the 26th July, 1873, by Order in Council dated the 1st July, 1873, and by clause 9 of the terms and conditions it was provided as follows:—

‘That the population of Prince Edward Island having been increased by 15,000 or upwards since the year 1861, the island shall be represented in the House of Commons of Canada by six members, the representation to be readjusted under the provisions of the British North America Act, 1867.’

25. Clause 11 of the said terms and conditions is in the same terms *mutatis mutandis* as clause 10 of the terms and conditions upon which British Columbia was admitted into the union above referred to.

26. Besides the seven provinces above mentioned, the Dominion of Canada at the present time includes certain territories divided into districts, known as the districts of Keewatin, Assiniboia, Saskatchewan, Alberta, Athabasca, Ungava, Franklin, Mackenzie and Yukon (being nine districts in all). These districts have from time to time, between the years 1876 and 1895, been formed out of British possessions on the North American continent which have from time to time been brought into the Dominion of Canada. They each have a special form of government assigned to them, and are on a totally different footing to the provinces whose internal government is regulated by the Act of 1867.

27. By the British North America Act, 1886 (hereinafter called the Act of 1886), it was provided (clause 2) that the parliament of Canada might from time to time make provision for the representation in the Senate and House of Commons of Canada or in either of them, of any territories which for the time being form part of the Dominion of Canada but are not included in any province thereof, and (clause 3) that that Act and the British North America Act, 1867, and the British North America Act, 1871, should be construed together and be cited together as the British North America Acts, 1867 to 1886.

28. In pursuance of the powers in that behalf given to it by the Act of 1886, the Canadian parliament has up to the present time made provision for the representation in the Senate and House of Commons of three of the above mentioned territories, namely the districts of Assiniboia, Saskatchewan and Alberta.

29. It is to be observed that there is no provision in the Act of 1886 with regard to the representation of the territories being readjusted in the manner provided by section 51 of the Act of 1867, and, in making provision for the representation of the before-mentioned territories, the Dominion parliament has in fact never had regard to the principle of representation by population which, by the Act of 1867, was applied to the four original provinces.

30. The last decennial census of Canada, provided for by the Act of 1867, was taken in the year 1901, and there has lately been introduced into the Canadian parliament a Redistribution Bill by which it is proposed, not only to grant additional re-

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presentation in the House of Commons to the territories, but also to readjust the representation of the seven provinces under the 51st section of the Act of 1867.

31. The readjustment provided for by the Redistribution Bill involves the reduction of the number of members to which the provinces of Ontario, New Brunswick and Nova Scotia respectively have been hitherto entitled. In the case of New Brunswick it is proposed to reduce its number of members from 15 to 13.

32. That the basis upon which the number of members assigned to the three last-mentioned provinces by the Redistribution Bill was ascertained, was that of the rules laid down in sub-sections 1, 2 and 3, of Section 51 of the Act of 1867, that is to say, there was assigned to each province such a number of members as bore the same proportion to the number of its population (as ascertained at the 1901 census) as the number 65 bore to the number of the population of Quebec (as ascertained by the 1901 census). And it was assumed that sub-section 4 of the said section did not prevent the number of members of any of the said provinces being reduced, because in the case of each of such provinces the proportion which the number of its population bore to the number of the aggregate population of the whole of the Dominion (including all the provinces and territories) at the last preceding readjustment of the number of members for the provinces was ascertained at the census of 1901 to have been diminished by one-twentieth part and upwards.

33. Upon the introduction of the Redistribution Bill it was at once contended on behalf of the provinces of New Brunswick and Nova Scotia, that it was not competent for the Canadian parliament to reduce the number of members elected by such provinces respectively, inasmuch as the words 'aggregate population of Canada' in sub-section 4 of the 51st section of the Act of 1867, meant the aggregate population of the four original provinces of Ontario, Quebec, New Brunswick and Nova Scotia only, and therefore since upon that basis the populations of New Brunswick and Nova Scotia had not in fact proportionately decreased to the extent provided for by such sub-section the condition precedent to the reduction of the number of members of such province had not been fulfilled.

34. The above contention of the provinces of New Brunswick and Nova Scotia not being acquiesced in by the Dominion government, these provinces asked that the question of the proper construction of the said sub-section should be made the subject of a reference by the Governor-General of Canada to the Supreme Court, pursuant to the authority of the Supreme Court and Exchequer Court Act, as amended by the Act 54 & 55 Victoria, Chapter 25, intituled 'An Act to amend Chapter 135 of the Revised Statutes intituled "An Act respecting the Supreme and Exchequer Courts."' Such reference was accordingly made in the terms of the special case above mentioned.

35. The said special case was argued before the Supreme Court (consisting of Taschereau, C. J., and Sedgewick, Girouard, Davis, Mills and Armour, J. J.) on the 20th, 21st and 22nd April, 1903, by counsel representing the Dominion of Canada and the provinces of Ontario, Quebec, Nova Scotia and New Brunswick respectively. A verbatim report of the arguments addressed to the Court will be found in the Record, pp. 5 to 60.

36. The Supreme Court held that according to the true construction of the Act of 1867 the words 'aggregate population of Canada' in sub-section 4 of section 51 of the Act meant the whole population of Canada, including that of the provinces which have been admitted into the Union subsequent to the passing of the said Act. The formal judgment of the court is dated the 29th April, 1903, and will be found in the Record at p. 71, and the reasons for the said judgment appear from the opinion delivered by Mr. Justice Mills, concurred in by the Chief Justice, Mr. Justice Sedgewick and Mr. Justice Armour, and the individual opinions of Mr. Justice Girouard and Mr. Justice Davies, which will be found in the Record, pp. 60 to 70.

37. The appellant, as representing the province of New Brunswick, feeling himself aggrieved by such judgment and opinion of the Supreme Court, presented a petition to His Majesty in Council, to grant him special leave to appeal therefrom to His Maj-

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esty in Council, and by an Order in Council dated the 21st of April, 1904, leave was granted to the appellant to enter and prosecute his appeal against the said judgment.

38. The appellant humbly submits that the judgment and opinion of the Supreme Court of Canada was erroneous and ought to be reversed or varied for (amongst other) the following—

REASONS.

1. Because upon the true construction of the Act of 1867 the provisions of the 51st section thereof relate only to the proportionate representation in the Dominion House of Commons of the original four provinces of the Dominion, and have no application to the representation of any province subsequently admitted to the Dominion.

2. Because by the Act of 1867 the representation in the Dominion parliament of any province subsequently admitted into the Union is left to be determined by the several legislative acts or orders under which such admission takes place.

3. Because the several legislative acts or orders in council, under which new provinces have been subsequently admitted into the union, cannot, by reason of their having conferred on such new provinces a representation in the Dominion House of Commons to be from time to time determined or adjusted by reference to the 51st section of the Act of 1867 be construed to alter the proportionate representation in such House of Commons of the four original provinces of the Dominion, as determined by such 51st section.

4. Because according to the true construction of the 51st section of the Act of 1867, the expression 'the aggregate population of Canada' as used in the 4th subsection thereof, means the aggregate population of Canada as originally constituted by such Act.

R. J. PARKER.

IN THE PRIVY COUNCIL.—ON APPEAL FROM THE SUPREME COURT OF CANADA.

Between

THE ATTORNEY-GENERAL FOR THE PROVINCE OF PRINCE EDWARD ISLAND,

Appellant.

and

THE ATTORNEY-GENERAL FOR THE DOMINION OF CANADA,

Respondent.

In the matter of a certain question referred to the Supreme Court of Canada by His Excellency the Governor General, in pursuance of an Order in Council approved by His Excellency on the 16th day of May, 1903.

Subject : Representation of Prince Edward Island in the House of Commons of Canada.

CASE OF THE RESPONDENT.

1. This is an appeal by special leave from a judgment or decision of the Supreme Court of Canada, dated the 8th day of June, 1903, certifying to the Governor in Council their opinion upon a question referred by him to the court for hearing or consideration by an Order in Council, dated 16th May, 1903, pursuant to the authority

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of the Supreme and Exchequer Courts Act, 1875, and Revised Statutes of Canada, cap. 135, as amended by the Act of Canada, 1891, 54-55 Victoria, chapter 25.

2. The question referred by the said Order in Council was as follows :—

‘Although the population of Prince Edward Island, as ascertained at the census of 1901, if divided by the unit of representation ascertained by dividing the number of sixty-five into the population of Quebec is not sufficient to give six members in the House of Commons of Canada to that province, is the representation of Prince Edward Island in the House of Commons of Canada liable under the British North America Act, 1867, and amendments thereto, and the terms of union of 1873, under which that province entered confederation, to be reduced below six, the number granted to that province by the said terms of union of 1873 ?’

3. The British North America Act, 1867, provides, section 146 :—

‘It shall be lawful for the Queen, by and with the advice of Her Majesty’s Most Honourable Privy Council, on addresses from the Houses of Parliament of Canada, and from the Houses of the respective legislatures of the colonies or provinces of Newfoundland, Prince Edward Island and British Columbia, to admit those colonies or provinces, or any of them, into the Union, and on address from the Houses of the Parliament of Canada to admit Rupert’s Land and the North-Western Territory, or either of them, into the Union, on such terms and conditions in each case as are in the addresses expressed, and as the Queen thinks fit to approve, subject to the provisions of this Act ; and the provisions of any Order in Council in that behalf shall have effect as if they had been enacted by the parliament of the United Kingdom of Great Britain and Ireland.’

4. By an order of the late Queen in Council, dated the 26th day of June, 1873, after reciting the before-mentioned section 146 of the British North America Act, 1867 ;

And reciting that by addresses from the Houses of the Parliament of Canada, and from the Legislative Council and House of Assembly of Prince Edward Island respectively Her Majesty was prayed under the 146th section of the hereinbefore recited Act to admit Prince Edward Island into the Dominion of Canada on the terms and conditions set forth in the said addresses :

And reciting that Her Majesty had thought fit to approve of the said terms and conditions.

It was (amongst other things) ordered and declared by the Queen in Council, in pursuance and exercise of the powers vested in Her Majesty by the British North America Act, 1867, that from and after the 1st day of June, 1873, the said colony of Prince Edward Island should be admitted into and become part of the Dominion of Canada, upon the terms and conditions set forth in the thereinbefore recited addresses.

5. The 12th term and condition contained in the said address is :—

‘12. That the population of Prince Edward Island having been increased by 15,000 or upwards since the year 1861, the island shall be represented in the House of Commons of Canada by six members, the representation to be readjusted from time to time under the provisions of the British North America Act, 1867.’

The fourteenth term and condition contained therein is :—

‘14. That the provisions in the “British North America Act, 1867,” shall, except those parts thereof which are in terms made, or by reasonable intendment may be held, to be specially applicable to, and only to affect one and not the whole of the provinces now composing the Dominion, and except so far as the same may be varied by these resolutions, be applicable to Prince Edward Island, in the same way and to the extent as they apply to the other provinces of the Dominion, and as if the colony of Prince Edward Island had been one of the provinces originally united by the said Act.’

6. Sections 51 and 52 of the British North America Act, 1867, provide :—

‘51. On the completion of the census in the year one thousand eight hundred and seventy-one, and of each subsequent decennial census, the representation of the four provinces shall be readjusted by such authority, in such manner, and from such time

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as the parliament of Canada from time to time provides, subject and according to the following rules :—

‘ (1) Quebec shall have the fixed number of sixty-five members ;

‘ (2) There shall be assigned to each of the other provinces such a number of members as will bear the same proportion to the number of its population (ascertained at such census) as the number sixty-five bears to the number of the population of Quebec (so ascertained) ;

‘ (3) In the computation of the number of members for a province a fractional part not exceeding one-half of the whole number requisite for entitling the province to a member shall be disregarded ; but a fractional part exceeding one-half of that number shall be equivalent to the whole number ;

‘ (4) On any such readjustment the number of members for a province shall not be reduced unless the proportion which the number of the population of the province bore to the number of the aggregate population of Canada at the then last preceding readjustment of the number of members for the province is ascertained at the then latest census, to be diminished by one-twentieth part or upwards ;

‘ (5) Such readjustment shall not take effect until the termination of the then existing parliament.’

‘ 52. The number of members of the House of Commons may be from time to time increased by the parliament of Canada, provided the proportionate representation of the provinces prescribed by this Act is not thereby disturbed.’

7. The census which was taken in the year 1881, showed the population of Canada to be 4,324,810, and the population of Prince Edward Island to be 108,891.

8. The pending appeal of the Attorney-General of New Brunswick against the Attorney-General of Canada, on the subject of the representation of that province, raises cognate questions on the construction of the British North America Act, and is, it is understood, to be argued at the same time as this appeal. For brevity, the respondent craves leave to refer to without repeating the facts and figures as to populations set out in his case on that appeal, of which case he deposits and supplies copies.

9. The number of members bearing the same proportion to the number of the population of the province of Prince Edward Island (ascertained at the census of 1891, being the first on which a readjustment could be made) as the number 65 bears to the number of the population so ascertained of the Province of Quebec, and subject to the provisions contained in sub-section 3 of section 51 of the British North America Act, 1867, is five.

10. The proportion which the said number of the population of the Province of Prince Edward Island bore to the aggregate population of Canada was less by more than one-twentieth of the proportion which the population of the province bore to the aggregate population of Canada at the census of 1881, and consequently the provision contained in sub-section 4 of section 51 of the British North America Act, 1867, did not operate to prevent the reduction of the number of members for the province in accordance with the provisions in sub-sections 2 and 3 of the same section.

11. After the completion of the census which was taken in 1891, namely in 1895, an Act of Canada was passed (c. 11 of 55 and 56 Vic.), to provide (*inter alia*) for such readjustment of the representation in the House of Commons as was required by section 51 of the British North America Act, 1867.

This Act, in its preamble, recites (*inter alia*) that by the census of 1891, and in accordance with the British North America Act, 1867, and certain other Acts of the Parliament of the United Kingdom and of the Parliament of Canada, the province of Prince Edward Island was by its then population entitled to five members in the House of Commons, and by section 1 enacts (*inter alia*) that the House of Commons should consist of 213 members, of whom five should be elected for Prince Edward Island.

12. The number of members bearing the same proportion to the number ascertained by the census of 1901 of the population of the province of Prince Edward

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as the number 65 bears to the number so ascertained of the population of the province of Quebec, and subject to the provisions contained in sub-section 3 of section 51 of the British North America Act, 1867, is four.

13. The proportion which the said number of the population of the province of Prince Edward Island bore to the 'aggregate population of Canada,' whether that population consisted of the seven provinces or of the seven provinces and the territories, was less by more than one-twentieth of the proportion which the population of the province bore to the aggregate population of Canada at the last preceding readjustment of the number of members for the province, and consequently the provision contained in sub-section 4 of section 51 of the British North America Act, 1867, did not operate to prevent the reduction of the number of members for the province in accordance with the provisions in sub-section 2 and 3, of the same section.

14. After the completion of the census of 1901 and in 1903 a Bill was introduced into the parliament of Canada to provide for such readjustment of the representation in the House of Commons as was necessary, pursuant to the provisions of the British North America Act, 1867, and the other statutes in that behalf. This Bill, since the date of the judgment under appeal, has become law, having received the Royal Assent on the 24th October, 1903, and being 3 Edward VII., chapter 60, intituled 'An Act to readjust the representation in the House of Commons.'

Section 2 of the Act enacts that the House of Commons shall consist of 214 members of whom four shall be elected for Prince Edward Island.

15. The hearing or consideration of the question referred by the Governor-General to the Supreme Court of Canada took place on June 2nd, 1903, before Taschereau, C.J., and Sedgewick, Girouard, Davies and Nesbitt, JJ.

16. On the 8th June, 1903, the Supreme Court unanimously answered the question in the affirmative.

17. The reasons for the answer of the Court to the question referred appear in the opinion given by Taschereau, C. J., which was concurred in by Sedgewick, Girouard, Davies, and Nesbitt, JJ., to the effect that as by the Federal census of 1901 the population of Prince Edward Island, divided by the unit of representation ascertained by dividing the number 65 into the population of Quebec, is not sufficient to give six members of the House of Commons to that province, the representation of that province must be readjusted proportionately to population as provided for by section 51 of the British North America Act.

The respondent submits that the said answer is right, and should be affirmed for the following (amongst other)

REASONS.

(1) Because under the terms of the British North America Act, 1867, the Order in Council admitting the province of Prince Edward Island into the union is (so far as it was within the powers vested in the Queen in Council by the British North America Act, 1867, and subject to the provisions of that Act), a statute, and must be construed as such; and, therefore, Prince Edward Island was by force of the said order in council introduced into Section 37 of the British North America Act, 1867, with a representation of six members, subject to be increased or reduced under the like conditions in all respects as provided by section 51 of the British North America Act, 1867, with regard to Ontario, Quebec, Nova Scotia and New Brunswick.

(2) Because the wording and effect of this statutory Order in Council is clear, and it is inadmissible to import into it words for the purpose of amplifying its meaning, or to look elsewhere for materials such as are suggested by the appellants in order to contradict or vary its plain meaning.

(3) Because it is the manifest object and intent of the British North America Acts to provide a system of representation by population, and the federal parliament

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representing Canada has rightly applied this principle to every province, and made the readjustments and reductions in representation necessitated thereby.

(4) Because the 12th article of the terms of union of the province of Prince Edward Island provides that the representation of the island shall be readjusted from time to time under the provisions of the British North America Act, 1867, and this can only be done under the provisions of section 51 of that Act. The operation of that section is in no way limited by the 12th article of the terms of union, and the section must be applied in its integrity.

(5) Because the readjustment of representation provided for by section 51 expressly and necessarily contemplates the possibility of reduction in the number of representative members.

(6) Because the suggested contingency of the island being left without representation in the federal parliament was at the time of the union, and still is, too far-fetched and remote to affect the plain meaning of the words.

(7) Because a remedy in case of any such result exists under section 52 of the British North America Act, 1867, through an increase in the members of the House of Commons.

(8) Because it could not have been the intention of the negotiators of the terms of the union that the island should forever possess a representation which might be, as it has turned out to be, steadily increasing in its disproportion.

(9) For the reasons appearing in the judgment or opinion of the Supreme Court.

EDWARD BLAKE.

E. L. NEWCOMBE.

FRANK RUSSELL.

IN THE PRIVY COUNCIL.—ON APPEAL FROM THE SUPREME COURT OF CANADA.

Between

THE ATTORNEY-GENERAL FOR THE PROVINCE OF NEW BRUNSWICK,

Appellant.

and

THE ATTORNEY GENERAL FOR THE DOMINION OF CANADA,

Respondent.

In the matter of a certain question referred to the Supreme Court of Canada by His Excellency the Governor Général, in pursuance of an Order in Council approved by His Excellency on the 17th day of April, 1903.

Subject: Representation of the province of New Brunswick in the House of Commons of Canada.

CASE OF THE RESPONDENT.

1. This is an appeal by special leave from a judgment or decision of the Supreme Court of Canada, dated the 29th day of April, 1903, certifying to the Governor in Council the opinion of the court upon a question referred to it by him for hearing or consideration by an Order in Council dated 17th April, 1903, pursuant to the authority of the Supreme and Exchequer Courts Act (1875), and revised statutes of Canada, cap. 135, as amended by the Act 54 and 55 Victoria (1891, Canada), chapter 25.

2. In accordance with the provisions of the said amending Act, notice of the hearing on the reference of the said question was duly given to all the provinces of

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the Dominion and to the North-west Territories. At such hearing in addition to the counsel representing the appellant and the respondent, counsel also appeared and were heard on behalf of the province of Nova Scotia, Quebec and Ontario.

3. The question referred by the said Order in Council of the 17th April, 1903, was as follows:—

‘In determining the number of representatives in the House of Commons, to which Nova Scotia and New Brunswick are respectively entitled after each decennial census, should the words “aggregate population of Canada” in subsection 4 of section 51 of the British North America Act, 1867, be construed as meaning the population of the four original provinces of Canada, or as meaning the whole population of Canada, including that of provinces which had been admitted to the confederation subsequent to the passage of the British North America Act?’

4. The British North America Act, 1867, which provided for the union into one Dominion under the name of Canada of the provinces of Canada (thereby divided into the provinces of Ontario and Quebec), Nova Scotia and New Brunswick, contains the following provisions:—

Section 37. ‘The House of Commons shall, subject to the provisions of this Act, consist of one hundred and eighty-one members, of whom eighty-two shall be elected for Ontario, sixty-five for Quebec, nineteen for Nova Scotia, and fifteen for New Brunswick.’

Section 51. ‘On the completion of the census in the year one thousand eight hundred and seventy-one, and of each subsequent decennial census, the representation of the four provinces shall be readjusted by such authority in such manner, and from such time, as the parliament of Canada, from time to time provides, subject and according to the following rules:—

‘(1) Quebec shall have the fixed number of sixty-five members ;

‘(2) There shall be assigned to each of the other provinces such a number of members as will bear the proportion to the number of its population (ascertained at such census) as the number sixty-five bears to the number of the population of Quebec (so ascertained) ;

‘(3) In the computation of the number of members for a province, a fractional part, not exceeding one half of the whole number requisite for entitling the province to a member shall be disregarded ; but a fractional part exceeding one-half of that number shall be equivalent to the whole number ;

‘(4) On any such readjustment the number of members for a province shall not be reduced unless the proportion which the number of the population of the province bore to the number of the aggregate population of Canada at the then last preceding readjustment of the members for the province is ascertained at the then latest census to be diminished by one-twentieth part or upwards ;

‘(5) Such readjustment shall not take effect until the termination of the then existing parliament.’

Section 52. ‘The number of members of the House of Commons may be from time to time increased by the parliament of Canada, provided the proportionate representation of the provinces prescribed by this Act is not thereby disturbed.’

Section 146. ‘It shall be lawful for the Queen, by and with the advice of Her Majesty’s Most Honourable Privy Council, on addresses from the Houses of Parliament of Canada, and from the Houses of the respective legislatures of the colonies or provinces of Newfoundland, Prince Edward Island and British Columbia, to admit those colonies or provinces, or any of them, into the Union ; and on address from the Houses of Parliament of Canada to admit Rupert’s Land and the North-Western Territory, or either of them, into the Union, on such terms and conditions in each case as are in the addresses expressed and as the Queen thinks fit to approve, subject to the provisions of this Act ; and the provisions of any Order in Council in that behalf shall have effect as if they had been enacted by the parliament of the United Kingdom of Great Britain and Ireland.’

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By the Act of Canada, 1870, 33 Victoria, chapter 3, passed in anticipation of and preparation for the admission of Rupert's Land and the North-West Territories, which Act was, after such admission, confirmed by the Act of the imperial parliament (1871), 34 and 35 Victoria, chapter 28, called 'The British North America Act, 1871,' there was formed out of Rupert's Land and the North-West Territories a province to be one of the provinces of the Dominion of Canada, and to be called the province of Manitoba.

6. In pursuance of the powers vested in Her by the British North America Act, 1867, the late Queen, by Orders in Council made as to Rupert's Land and the North-West Territories, on 23rd June, 1870, as to British Columbia on 16th May, 1871, and as to Prince Edward Island on 23rd June, 1873, ordered and declared that from and after the dates therein respectively mentioned, Rupert's Land and the North-West Territories and the colonies of British Columbia and Prince Edward Island respectively, should be admitted into and become part of the Dominion of Canada, upon the terms and conditions therein expressed or referred to.

7. By Act of the imperial parliament passed in 1886, chapter 35, called the British North America Act, 1886, powers were given to the parliament of Canada to make provision for the representation in the Senate and House of Commons of Canada, of territories forming part of the Dominion of Canada but not included in any province thereof. And it was enacted that the said Act and the British North America Acts, 1867 and 1871, should be construed together and might be cited together as the British North America Acts, 1867 to 1886.

8. The Act of Canada (1892), 55 and 56 Victoria, chapter 11, intituled, 'An Act to readjust the representation in the House of Commons,' recited in the preamble that by the census in 1891, and in accordance with the British North America Act, 1867, and certain other Acts of the parliament of the United Kingdom and of the parliament of Canada, the province of Nova Scotia was by its then population entitled to twenty members in the House of Commons and the province of New Brunswick to fourteen members, and section 1 enacted that the House of Commons should consist of two hundred and thirteen members, of whom ninety-two (the same number as in the then sitting parliament) should be elected for Ontario, twenty for Nova Scotia, and fourteen for New Brunswick.

9. The populations according to the censuses of 1891 and 1901 were respectively as follows :—

	1891.	1901.
Ontario.. . . .	2,114,321	2,182,947
Quebec.. . . .	1,488,535	1,648,898
Nova Scotia.. . . .	450,396	459,574
New Brunswick.. . . .	321,263	331,120
Manitoba.. . . .	152,506	255,211
British Columbia.. . . .	98,175	178,657
P. E. Island.. . . .	109,078	103,259
<hr/>		
Canada (the seven provinces).. . . .	4,734,272	5,159,666
The territories.. . . .	98,967	211,649
<hr/>		
Canada (the Dominion).. . . .	4,833,239	5,371,315

10. The number of members bearing the same proportion to the number ascertained at the census of 1901 of the population of the province of New Brunswick as the number sixty-five bears to the number of the population so ascertained of the province of Quebec, and subject to the provision contained in sub-section (3) of section 51 of the British North America Act, 1867, is thirteen.

11. Whether subsection (4) of section 51 of the said Act operates to prevent the readjustment of the number of members for the province in accordance with the provisions

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of subsections (2) and (3) of the same section depends upon the answer to the question the subject of the reference.

12. Assuming, as decided by the Supreme Court in the judgment under appeal, that the words 'aggregate population of Canada,' in subsection (4), mean, as applied to the relevant conditions, the whole population of the Dominion of Canada, including that of the provinces which have been admitted to the confederation, and the territories which have been embraced in the Dominion subsequent to the passage of the British North America Act, 1867, then comparing the population of New Brunswick in 1891 and 1901 respectively, with that of the Dominion of Canada in these years, the proportion in 1891 is expressed by

the fraction.. . . .	321,263	'0664
	<hr/> 4,833,239	
and the proportion in 1901 by the fraction....	331,120	'0616
	<hr/> 5,371,315	

The proportion is, therefore diminished by.. . . . '0048
which is more than one-twentieth of '0664.

On this hypothesis, therefore, subsection (4) will not avail to save the province from a reduction in the number of its members.

13. Assuming that the words 'aggregate population of Canada' in subsection (4) mean as applied to the relevant conditions the population of the provinces of Canada, including that of provinces which have been admitted to the confederation, but excluding that of the territories which have been embraced in the Dominion subsequent to the passage of the British North America Act, 1867; then comparing the population of New Brunswick in 1891 and 1901 respectively, with that of the seven provinces of Canada in these years, the proportion in 1891 is expressed by

the fraction.. . . .	321,263	'067859
	<hr/> 4,734,272	
and the proportion in 1901 by the fraction..	331,120	'064174
	<hr/> 5,159,666	

The proportion is, therefore, diminished by.. . . . '063685
which is more than one-twentieth of '067859.

On this second hypothesis, therefore, subsection (4) will not avail to save the province from a reduction in the number of its members.

14. But assuming that the words 'aggregate population of Canada,' in subsection (4), mean as applied to the relevant conditions, the population of the four original provinces of Canada, then the figures corresponding to those given above would be:—

The proportion in 1891.. . . .	321,263	'0734
	<hr/> 4,374,515	
And in 1901.. . . .	331,120	'0716
	<hr/> 4,622,539	

A diminution of.. . . . '0016
which is less than one-twentieth of '0734.

On this last hypothesis, therefore, subsection (4) would apply and save the province from a reduction of its members under the provisions of subsections (2) and (3).

15. The numbers of members bearing the same proportion to the numbers ascertained at the census of 1901 of the population of the provinces of Ontario and Nova Scotia respectively as the number 65 bears to the number of the population so ascertained of the province of Quebec, and subject to the provision contained in subsection

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(3) of the section 51 of the British North America Act, 1867, are 86 and 18 respectively.

16. Whether subsection (4) of section 51 of the said Act operates to prevent the reduction of the number of members for the provinces of Ontario and Nova Scotia respectively depends as in the case of the province of New Brunswick upon the construction to be placed upon the words 'aggregate population of Canada' occurring in that subsection. And the same results would follow as in New Brunswick from the adoption of any one of these constructions.

17. After the completion of the census of 1901 and in 1903, a Bill was introduced into the parliament of Canada to provide for such readjustment of the representation in the House of Commons as was necessary pursuant to the provisions of the British North America Act, 1867, and the other statutes in that behalf. This Bill since the date of the judgment now appealed from has become law, having received the Royal Assent on the 24th of October, 1903, and being 3 Edward VII., chapter 60, intituled 'An Act to readjust the representation in the House of Commons.'

Section 2 of the Act enacts that the House of Commons shall consist of 214 members, of whom eighty-six shall be elected for Ontario, eighteen for Nova Scotia and thirteen for New Brunswick.

18. The hearing or consideration of the question referred by the Governor General to the Supreme Court of Canada took place on the 20th, 21st and 22nd days of April, 1903, before Taschereau, C.J., and Sedgewick, Girouard, Davies, Mills and Armour, JJ.

19. On the 29th April, 1903, the Supreme Court delivered their opinion that the words 'aggregate population of Canada' in subsection (4) of section 51 of the British North America Act, 1867, should be construed as meaning the whole population of Canada, including that of provinces which have been admitted to the confederation subsequent to the passage of the British North America Act.

20. The reasons for the opinion appear in the opinion delivered by Mills, J., which was concurred in by Taschereau, C.J., and Sedgewick and Armour, JJ., and the separate opinions delivered by Girouard, J., and Davies, J. Some expressions in the reasons may create a doubt as to whether the words are being construed as meaning the seven provinces or the whole Dominion, including the territories.

The respondent submits that the judgment or opinion of the Supreme Court of Canada is right and should be affirmed for the following (amongst other)

REASONS.

1. Because it is the manifest object and intent of the British North America Acts to make provision for a system of representation according to population, and the Acts can and should receive a construction effectuating such intent.

2. Because under the powers and provisions granted and reserved in and by the British North America Acts and Acts of the parliament of Canada, and in view of the subsequent admission thereunder of the additional provinces of Manitoba, British Columbia and Prince Edward Island, the 'four provinces' mentioned in section 51 of the British North America Act, 1867, must now be read and construed as meaning the 'seven provinces' actually comprised in the Dominion.

3. Because the word 'Canada,' as used in subsection (4), must now be read and construed as comprising the area of the Dominion, and at any rate the existing seven provinces of Canada.

4. For the reasons appearing in the judgment or opinion of the Supreme Court.

EDWARD BLAKE.

E. L. NEWCOMBE.

FRANK RUSSELL.

